SUPREME COURT OF THE UNITED STATES.

No. 21.

ASA GREEN, PLAINTIFF IN ERROR,

VERSUS

LESSEE OF HENRY NEAL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST TENNESSEE.

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THE UNITED STATES, ss.—*The President of the United States to the Judge of the circuit court of the United States for the district of West Tennessee, greeting:*

Because, in the record and proceedings, as, also, in the rendition of the judgment, of a plea which, in the said circuit court, before you or some of you, between John Den, lessee of Henry Neal, plaintiff, and Asa Green, defendant, in ejectment, a manifest error hath happened, to the great damage of the said defendant, as by complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, we command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington on the 3d Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected by the said Supreme Court, may cause

further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness, the Honorable John Marshall, Chief Justice of the said Supreme Court, the *first* Monday of January, in the year of our Lord one thousand eight hundred and twenty-nine, and of the independence of the United States the fifty-third.

N. A. McNAIRY,
Clerk of the circuit court for the district of West Tennessee.

THE UNITED STATES' SEVENTH CIRCUIT, DISTRICT OF WEST TENNESSEE.

To Henry Neal, lessor of John Den, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the third Monday in January next, pursuant to a writ of error filed in the Clerk's office of the circuit court of the United States for the 7th circuit, in the district of West Tennessee, wherein Asa Green is plaintiff in error, and said John Den, lessee of Henry Neal, is defendant, to show cause, if any there be, why the judgment rendered against the said Green, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John Marshall, Chief Justice of the Supreme Court of the United States, the *first* Monday of January, in the year of our Lord 1829, and of the independence of the United States the 53d.

I acknowledge service of the above citation, this 23d day of January, 1830.
THOMAS WASHINGTON,
Attorney for Henry Neal.

Pleas at Nashville, for the 7th circuit of the United States, in the district of West Tennessee, before the Honorable John McLean, Esq., Associate Justice of the Supreme Court of the United States, and the Honorable John McNairy, Esq., Judge of the courts of the United States for the districts of East and West Tennessee, at June term, being the 16th day of June, in the year 1829, and of the independence of the United States the 53d.

JOHN DEN, lessee of HENRY NEAL, *plaintiff,*
vs.
ASA GREEN, *defendant.*
} *In ejectment.*

Be it remembered, that heretofore, to wit, on the 10th day of July, 1824, there was sued out of this court a declaration in ejectment, with a notice thereto attached, which declaration and notice is in the words and figures following, to wit:

John Den, a citizen of North Carolina, by attorney, complains of Richard Fen, a citizen of the State of Tennessee, in custody, &c., of a plea of trespass, for that Henry Neal, a citizen of the State of North Carolina, on the 1st day of January, 1824, at Nashville, in the said district of West Tennessee, demised and to farm let unto the said John Den, one messuage, and a certain tract or parcel of land containing six hundred and forty acres, lying and being in Robertson county, in the State of Tennessee, on both sides of Buzzard creek, on the south side of Red river, beginning about three-quarters of a mile above a spring, and tree marked E E, at two red oaks, running south three hundred poles to a white oak; thence east, three

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hundred and forty-two poles, to a white oak; thence north, three hundred poles, to a stake; thence west, three hundred and forty-two poles, to the beginning, with the appurtenances thereto belonging: to have and to hold the said messuage and tract or parcel of land, with the appurtenances, unto the said John Den and his assigns, from the 1st day of January, in the year aforesaid, for the term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise, the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed, until said Richard Fen, afterwards, on the 10th day of January, in the year aforesaid, with force and arms, entered into said demised premises, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his term aforesaid not being yet ended, and still keeps out said John Den, so amoved; and said Richard Fen, then and there, other wrongs and enormities to the said John Den did, against the peace of the United States, and to the damage of said John Den one thousand dollars; and therefore he brings suit, and these are pledges to prosecute.

THOMAS WASHINGTON, *Attorney.*

Mr. ASA GREEN, who is a citizen of Tennessee:

I am informed that you are in possession of, or claim title to, the demised premises in the above declaration mentioned, or some part thereof; and I being sued in this action as casual ejector, and having no claim or title to the same, do advise you to *appoint* at the next term of the circuit court of the United States for the district of West Tennessee, to be holden in Nashville on the first Thursday after the fourth Monday in November next, personally, or by some attorney of that court, and then and there, by a rule of said court, to cause yourself to be made a defendant in my stead, or I shall suffer judgment to be entered against me, and you will be turned out of possession.

Yours, &c.,

RICHARD FEN.

And on the first Thursday after the fourth Monday, being the 25th day of November, in the year 1824, and of the independence of the United States the forty-ninth, Asa Green, the tenant in possession, upon whom the declaration in ejectment in this cause was served, by attorney comes; and, by consent of the plaintiff's attorney, and with the assent of the court, he is admitted defendant in the room and stead of the said Richard Fen, upon condition that he plead not guilty to the plaintiff's action, and on the trial agrees to admit lease, entry, and ouster, and rely on his title only. Whereupon, the defendant comes and defends the force and injury, when, &c., where, &c., and says the plaintiff his action against him ought not to have and maintain, because he says he is not guilty of the trespass and ejectment in the plaintiff's declaration supposed; and of this he puts himself upon the country.

GRUNDY, *Attorney.*

And the plaintiff likewise.

WASHINGTON, *Attorney.*

And said cause was continued from term to term until this term; and now, to wit, the day first above mentioned, came the parties by their attorneys, and thereupon came also a jury of good and lawful men, to wit: Samuel

Shannon, Samuel B. Marshall, Richard Stelle, George Smith, Samuel Wharton, Benjamin Springs, Philip Detheridge, Page Boyd, Mimmican H. Howard, Lawson L. Davis, Samuel Dickins, and John Car, who, being elected, tried, and sworn well and truly to try the issue joined, upon their oaths do say the defendant is guilty of the trespass and ejectment in the declaration mentioned, and they assess the plaintiff's damage by reason thereof to one cent, besides cost. It is, therefore, considered by the court that the plaintiff recover of the defendant his term to come, of, in, and to the premises in the declaration mentioned, and also his costs in this behalf expended; and the writ of habere facias possessionem is now awarded the plaintiff.

And on the 23d day of the term aforesaid, came the defendant, by his attorney, and tendered his bill of exceptions to the opinion of the court in this cause, which he prays may be signed and sealed, and made a part of the record, which is done accordingly. Whereupon, he prays a writ of error to the Supreme Court of the United States; and it being admitted by the parties that the land in dispute is of the value of two thousand dollars, said writ of error is granted, on the defendant's giving bond and security for the costs.

Whereupon, the said defendant produced to the judge here a bond, in the words and figures following, to wit:

BOND.

Know all men by these presents, that we, Asa Green and John C. McLemore, are held and firmly bound to Henry *Hail*, &c., in the sum of five hundred dollars, for the payment of which we bind ourselves. The condition of which obligation is, that whereas, at June term, 1829, of the circuit court of the United States for the district of West Tennessee, at Nashville, a judgment was rendered against said Green on the 16th day of June of said term, in favor of said Nail, of a tract of land lying in Robertson county, from which judgment said Green prayed and obtained an appeal, in the nature of a writ of error, to the Supreme Court of the United States; now, if the said Green shall prosecute his said writ of error with effect, or assume and pay all costs and damages that may be awarded against him for failure to make good his said plea, then this obligation is to be void and of no effect, otherwise to be and remain in full force and virtue.

Witness our hands and seals, this 23d day of June, 1829.

[L. s.]

JOHN C. McLEMORE, [L. s.]

And also tendered a bill of exceptions to the opinion of the court, which was signed and sealed by the court, and ordered to be made part of the record of the cause; which bill of exceptions is in the words following, to wit:

Plaintiff, in the trial of this cause, introduced in evidence a grant from the State of North Carolina, dated

to *Willoughby Williams*, for the land in controversy, and deduced a regular chain of conveyances to plaintiff's lessor, and proved defendant in possession, at the time this suit was brought, of the land in question; defendant introduced a deed from Andrew Jackson to Edward Dillon, and proved that the defendant held by a lease from Dillon; and also, in support of Dillon's title, introduced evidence tending to prove that persons claiming under and for Dillon had been more than seven years in pos-

session of the premises in dispute, adverse to plaintiff's; upon which, the court charged the jury, that, according to the present state of decisions in the Supreme Court of the United States, he could not charge that defendant's title was made good by the statute of limitations.

To which defendant excepts, and the exception is sealed by the court, and made a part of the record.

JOHN McLEAN, [L. S.]

UNITED STATES OF AMERICA, DISTRICT OF WEST TENNESSEE.

I, Nathaniel A. McNairy, Clerk of the courts of the United States for the district aforesaid, held at Nashville, do hereby certify that the foregoing is a true transcript of the record and proceedings in the suit, John Den, lessee of Henry Neal, *vs.* Asa Green; and, also, a true copy of the bill of exceptions, signed and sealed by the Honorable John McLean, Esq., &c.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Nashville, on this 16th day of November, in the year of our Lord one thousand eight hundred and twenty-nine, and of the independence of the United States the 54th.

N. A. McNAIRY, *Clerk.*